D.B.CIVIL SPECIAL APPEAL (WRIT) No. 759/2003.

RICHPAL SINGH VS. STATE OF RAJASTHAN

Date: 15.07.2005.

HON'BLE MR RAJESH BALIA, J.
HON'BLE MR R.S. CHAUHAN, J.

Mr. K.C. Samdariya for the petitioner.
Mr. Shyam Ladrecha, Additional Government Advocate.

Having heard learned counsel for the parties, we are of the opinion that the issues raised in this petition are concluded by the decision of Division Bench of this Court in State of Rajasthan Vs. Mangi Lal (D.B. Civil Special Appeal No. 529/1995) decided on 11.3.1996 holding that in order to apply Rule 26 of the Rajasthan Service Rules for fixation of pay, the period of service when the incumbent prior to appointment to any service governed by RSR was serving as government servant under another Department of the Government rendered in Work Charge Establishment shall not be counted in which he has joined later on if the other service is governed by Rajasthan Service Rules at all or by other Rules, to which reference has been made under Rule 26.

The petitioner's case is that from 1.6.73 to

8.1.80, he was serving under the State Government in the Work Charge Establishment terms of which were not governed by Rajasthan Service Rules (RSR). On 15.1.80, the petitioner was appointed as Ameen in the service governed by RSR.

In view of his appointment from one government Department to another government Department , the question arose about fixation of pay of the petitioner in the pay scale applicable to post of Ameen. The petitioner-appellant claimed that since petitioner is appointed to a service governed by R.S.R., fixation of his pay is governed by Rule 26 and he is entitled to protect his pay, which he was drawing under the previous government service in terms of Rule 26.

Mangilal's case (supra) had arisen in like circumstances. The fact that the petitioner – appellant is a government servant governed by the R.S.R. being not disputed, his pay is required to be fixed under Rule 26. Service rendered under Work Charge Establishment is a service rendered under Government. If this is so, notwithstanding that the R.S.R. does not apply to work charge establishment, when the incumbent was previously employed, still persons employed in work charge

establishment can be considered under Rule 26 RSR. The expression used in Rule 26 prescribes only government employee "appointed to another government service" and therefore, the distinction cannot be drawn for the purpose of invoking Rule 26 between one government service and another government service on the basis of applicability of R.S.R.

The said judgment of the learned Single Judge on which reliance has been placed, has since been reversed by the Division Bench in the case noticed above.

Learned counsel for the appellant states that issue needs to be reconsidered as the view taken by the learned Single Judge has not taken into account that Work Charge Rules, 1964 were also Rules framed under proviso to Article 309 and though all the general terms and conditions of R.S.R. has not been extended to it, but it provides for status of permanent employees for persons recruitted under it and that appointment on Work Charge Establishment has since been made pensionable like any other service says, hence the persons appointed under the Work Charge Rules have the status of permanent government servants belonging to Work Charge Establishment of the State. However, we are of the opinion

that out of two plausible views, the Division Bench has accepted the one view from the two. Merely because, another Division Bench may lean in favour of another view by itself would not be a ground for deviating from earlier judgment by the latter.